

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL MUTHEE MUNYWE,

Plaintiff,

v.

MARY ROBNETT, et al.,

Defendants.

Case No. C21-5604-RSM-BAT

ORDER REVOKING IN FORMA  
PAUPERIS ON APPEAL

This matter comes before the Court on a referral from the Ninth Circuit Court of Appeals to determine whether in forma pauperis (“IFP”) status should continue on appeal. Dkt. #15. Pro se Plaintiff Michael Muthee Munywe was granted leave to proceed in forma pauperis in this matter on April 4, 2022. Dkt. #5. On September 1, 2021, Magistrate Judge Tsuchida found Mr. Munywe’s complaint duplicative of one filed earlier in *Munywe v. Peters, et al.*, 3:21-cv-05431-BJR-JRC, and recommended dismissal without prejudice. Dkt. #7. The Court adopted this Report and Recommendation and dismissed this case on September 30, 2022. Dkt. #11.

Where, as here, a party was permitted to proceed IFP in the District Court, the party may proceed on appeal in forma pauperis without further authorization unless the District Court certifies in writing that the appeal is not taken in good faith or that the party is not otherwise

1 entitled to proceed IFP. Fed. R. App. P. 24(a)(3); 28 U.S.C. § 1915(a)(3) (“An appeal may not  
2 be taken in forma pauperis if the trial court certifies in writing that it is not taken in good  
3 faith.”). An appeal is taken in “good faith” where it seeks review of at least one issue or claim  
4 that is found to be “non-frivolous.” *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th  
5 Cir. 2002). An issue is “frivolous” where it “lacks an arguable basis either in law or in fact.”  
6 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Legally frivolous claims are those “based on an  
7 indisputably meritless legal theory,” such as claims against defendants who are immune from  
8 suit or for infringement of a legal interest that clearly does not exist. *Id.* at 327.

10 A review of the Complaint in this action and that in the previous action filed by Mr.  
11 Munywe clearly indicates that these cases are duplicative, or that the instant case alleges claims  
12 that are properly added to the first case, still pending before Judge Rothstein. *See* Dkt. #7 at 6  
13 (“The claims against the new defendants are based entirely upon the fact that DPA Rogers is a  
14 Pierce County and Pierce County Prosecuting Attorney employee and that the new defendants  
15 are liable for DPA Roger’s actions. The new defendants thus add nothing that is not already  
16 inherently a part of the First Complaint, and to the extent the new defendants provide further  
17 fodder for Plaintiff’s claims against DPA Rogers they can be added to the First Complaint via  
18 amendment.”). A duplicative lawsuit is properly dismissed under 28 U.S.C. § 1915A. *See*,  
19 *e.g.*, *Spillard v. Costa*, 2020 WL 5039205 at \* 1 (E.D. Cal. Aug. 26, 2020); *Adams v.*  
20 *California Dep’t of Health Servs.*, 487 F.3d 684, 692 (9th Cir. 2007) (“Dismissal of the  
21 duplicative lawsuit, more so than the issuance of a stay or the enjoinder of proceedings,  
22 promotes judicial economy and the ‘comprehensive disposition of litigation.’”).  
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26 For the reasons set forth above, the Court continues to believe that any appeal of this  
27 ruling necessarily lacks an arguable basis in law or in fact. The Court cannot find that  
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1 Plaintiff's appeal has been taken in good faith, and maintains that, by its assessment of the  
2 proposed Complaint, Plaintiff's claims are legally frivolous or malicious.

3 Accordingly, the Court hereby FINDS AND ORDERS that Plaintiff's in forma pauperis  
4 status is REVOKED.

5 DATED this 17<sup>th</sup> day of October, 2022.  
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8 RICARDO S. MARTINEZ  
9 UNITED STATES DISTRICT JUDGE  
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